

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

8:17CR304

vs.

OMAR VAZQUEZ ALDERETE,

Defendant.

MEMORANDUM AND ORDER

This matter is before the Court on the Motion for Return of Property Pursuant to Rule 41(g), ECF No. 101, filed by Defendant Omar Vazquez Alderete. For the following reasons, the motion is granted in part.

BACKGROUND

Following a traffic stop in Deuel County, Nebraska, on September 9, 2017, Alderete was arrested and charged with intent to distribute heroin. ECF No. 1. Alderete's personal effects were seized during the arrest, and the vehicle Alderete was driving, a silver Nissan Altima, was impounded, inventoried, and stored in the Deuel County Sheriff Impound Yard. ECF No. 30.

Alderete entered a plea of guilty pursuant to a plea agreement on August 27, 2018, ECF No. 45, and was sentenced on March 4, 2019, to a term of 46 months incarceration and a 3-year term of supervised release. ECF No. 73. He is currently incarcerated at the Giles W. Dalby Federal Correctional Institution in Post, Texas.

On December 19, 2019, Alderete filed a Motion for Return of Property pursuant to Federal Rule of Criminal Procedure 41(g), ECF No. 101. Alderete requests that the Government return a black Samsung Galaxy cellphone, an Apple iPad, a yellow/black

duffle bag, a black Broncos hat, and a pair of polarized Ray-Ban sunglasses. ECF No. 101. The Government responded to Alderete's Motion on January 23, 2020.

DISCUSSION

The Government does not object to Alderete's Motion as it refers to the Samsung Galaxy cellphone, the Apple iPad, and the yellow/black duffle bag. Such property is in possession of the Government and will be returned to Alderete's designee at the Cheyenne County Sheriff's Office.

The Government is not in possession of Alderete's Ray-Ban sunglasses or black Broncos hat. ECF No. 103. The Government cannot return property it does not possess. *United States v. White*, 718 F.2d 260, 261 (8th Cir. 1983) (citing *United States v. Prevatt*, 414 F.2d 239 (5th Cir. 1969), *supplemented by* 446 F.2d 905 (5th Cir. 1971)). Therefore, Alderete's Motion is denied to the extent it seeks the return of property the government does not possess: the Ray-Ban sunglasses and black Broncos hat.

Accordingly,

IT IS ORDERED:

1. Alderete's Motion for Return of Property, ECF No. 101, is granted in part;
 - a. The Government shall return Alderete's Samsung Galaxy cellphone, Apple iPad, and duffle bag;
 - b. Alderete shall name a designee who shall retrieve Alderete's Samsung Galaxy cellphone, Apple iPad, and yellow/black duffle bag from the Cheyenne County Sheriff's Office;
2. The Motion is otherwise denied.

Dated this 27th day of January, 2020.

BY THE COURT:

s/Laurie Smith Camp
Senior United States District Judge